

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

| | | |
|----------------------|---|-----------------------------|
| IN THE MATTER OF |) | Docket No. CWA-08-2003-0094 |
| |) | |
| Iowa Tanklines, Inc. |) | CONSENT AGREEMENT |
| 7722 F Street |) | |
| Omaha, NE 68127 |) | |
| Clear Creek Release, |) | |
| Dumont, Colorado |) | |
| |) | |
| _____ Respondent. |) | |

AUTHORITY

1. _____ This Consent Agreement is entered into between Complainant United States Environmental Protection Agency Region 8 ("EPA") and Iowa Tanklines, Inc., ("Respondent") pursuant to Section 311(b)(6)(B)(ii) of the Clean Water Act ("the Act"), 33 U.S.C.

§ 1321(b)(6)(B)(ii), which authorizes the EPA Administrator to issue civil penalties for violations of CWA § 311(b)(3), 33 U.S.C. § 1321(b)(3), as amended by the Oil Pollution Act Amendments of 1990. This authority has been properly delegated to the undersigned EPA officials. Complainant and Respondent (hereafter referred to collectively as "the Parties"), by their undersigned representatives, hereby consent and agree as follows.

FACTUAL AND PROCEDURAL BACKGROUND

2. On September 22, 2003, Complainant issued Respondent an Administrative
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Complaint and Notice of Opportunity for Hearing (“Complaint”) under section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), for alleged violation of section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3). The violation occurred when a tanker truck owned and/or operated by Respondent overturned on the north side of the westbound lanes of I-70 at approximately mile marker 235 near Dumont, Clear Creek County, Colorado, and discharged an estimated 8,201 gallons (or 195 barrels) of unleaded gasoline into or upon Clear Creek and adjoining shorelines on November 9, 2001. The Complaint proposed a civil penalty for the violation alleged therein.

3. Respondent admits the jurisdictional allegations of the Complaint and the Consent Agreement.

4. Respondent neither admits nor denies the specific factual allegations of the Complaint and the Consent Agreement.

5. Respondent waives its right to a hearing before any tribunal to contest any issue of law or fact set forth in the Complaint or this Consent Agreement.

6. This Consent Agreement contains all terms of the settlement agreed to by the Parties. Upon incorporation into a final order, this Consent Agreement applies to and is binding upon Complainant and Respondent, Respondent’s officers, directors, employees, agents and all persons acting under or for Respondent, until such time as the civil penalty required under paragraph no. 9 has been paid. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter

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Respondent's responsibilities under this agreement.

7. Respondent is in current compliance with the Act.

8. Pursuant to § 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), EPA determined that an appropriate civil penalty to settle this action is in the amount of Ninety Five Thousand Five Hundred Sixty Dollars (\$95,560) after considering the seriousness of the violations, the economic benefit to the violator, the degree of culpability, any other penalty for the same incident, any prior history, Respondent's efforts to mitigate the effects of a discharge, the economic impact of the penalty on the violator, and any other matters as justice may require.

9. Respondent consents and agrees to pay the amount of Ninety Five Thousand Five Hundred Sixty Dollars (\$95,560) to resolve the violation alleged in the Complaint and for the spills of petroleum products listed in Appendix A.¹

TERMS OF SETTLEMENT

10. Without any admission or adjudication of any issue of fact or conclusion of law, Respondent consents to the issuance of the Consent Agreement and, for the purposes of settlement, to the payment of the above-cited civil penalty.

11. Respondent consents and agrees to pay the above-stated amount in quarterly payments. Beginning not more than thirty (30) days after Respondent's receipt of a signed final

¹ Because Iowa Tanklines is required by law to report spills of petroleum or hazardous materials to EPA, it sought to resolve its liability for certain spills that it had self-reported. EPA agreed to include the spills set forth in Appendix A as part of the resolution of this matter because after careful analysis, EPA agreed that such spills did not reach navigable waters of the United States, making them beyond the scope of section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3).

order in this matter, Respondent shall pay a quarter of the total civil penalty in the amount of Twenty Three Thousand Eight Hundred Ninety Dollars (\$23,890), by remitting a corporate, cashier's or certified check, payable to the order of the "Oil Spill Liability Trust Fund, to:

Jane Nakad
Technical Enforcement Program (8ENF-UFO)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

The check shall reference the Respondent's name and address, and the EPA docket number of this action.

12. Respondent agrees to mail a copy of the check simultaneously to the following:

Tina Artemis, Regional Hearing Clerk
U.S. EPA Region 8 (8RC)
999 18th Street, Suite 300
Denver, CO 80202-2466

Amy Swanson, Enforcement Attorney
U.S. EPA Region 8 (8ENF-L)
999 18th Street, Suite 300
Denver, CO 80202-2466

13. Respondent agrees to make three additional, consecutive quarterly payments in the amount of Twenty Three Thousand Eight Hundred Ninety Dollars (\$23,890) in the same manner as referenced above in paragraph nos. 11 and 12.

14. Respondent agrees and consents that if it fails to pay the penalty amount within the time frames set forth in paragraphs 11 and 13 above, EPA may demand a one-time payment of the outstanding cash settlement amount of \$95,560, plus interest and a late charge of fifteen dollars (\$15.00) after the first 30-day period and for each subsequent 30-day period, or any portion thereof, that the payment is overdue until payment is made.

15. The penalty specified in paragraph 9 above shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

GENERAL PROVISIONS

16. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with the Act and its implementing regulations.

17. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach and may result in referral of the matter to the Department of Justice for enforcement of this Consent Agreement and for such other relief as may be appropriate.

18. Nothing in this Consent Agreement shall be construed as a waiver by EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted if Respondent fails to perform pursuant to the terms of this Consent Agreement.

19. Respondent's undersigned representative certifies that he or she is fully authorized to enter into the terms and conditions for this Consent Agreement and to bind the party he or she represents to the terms and conditions of this Consent Agreement.

20. The Parties agree to bear their own costs and attorneys fees in connection with this matter.

21. The Parties agree to forward this Consent Agreement to the Regional Judicial Officer with a request that it be incorporated into a final order.

22. This Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and upon full payment of the agreed-upon amount by the Respondent, shall constitute a complete and full settlement of the specific violation alleged in the Complaint as

well as the additional spills identified in Appendix A.

SO CONSENTED AND AGREED TO:

IOWA TANKLINES, INC.,
Respondent.

Date: 4-26-04

By: SIGNED
Keith Hohensee
President

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8**
Complainant.

Date: 04/28/04

By: SIGNED
Michael T. Risner, Director
David J. Janik, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: 3/25/04

By: SIGNED
Elisabeth Evans, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: 4.28.04

By: SIGNED
Amy Swanson, Enforcement Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **IOWA TANKLINES, INC., DOCKET NO.: CWA-08-2003-0094** was filed with the Regional Hearing Clerk on April 30, 2004.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Amy Swanson, Enforcement Attorney, U.S. EPA - Region 8, 999 18th Street - Suite 300, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt on April 30, 2004, to:

Edward T. Lyons, Jr., Esq.
Jones & Keller
1625 Broadway, 16th Floor
Denver, CO 80202

and

Honorable William B. Moran
Administrative Law Judge (1900L)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

and

Commander
Finance Center (OGR)
U.S. Coast Guard
1430 A Kristina Way
Chesapeake, VA 23326

April 30, 2004

SIGNED_____

Tina Artemis
Regional Hearing Clerk

IF YOU WOULD LIKE COPIES OF THE ATTACHMENT, PLEASE CONTACT THE REGIONAL HEARING CLERK.

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON APRIL 30, 2004.